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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 445

BROOKLYN SAVINGS BANK,
Petitioner,

v.

WILLIAM J. O'NEIL,
Respondent.

PETITION FOR REHEARING

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Your petitioner, Brooklyn Savings Bank, respectfully prays that a rehearing be granted pursuant to Rule 33 of the Rules of this Court, in the above cause and for an order staying the judgment of this Court entered herein on April 9, 1945, until final determination of this application.

Statement

On April 18, 1945, the Clerk of this Court advised counsel for the petitioner that Mr. Justice REED, pursuant to a suggestion from the Solicitor General, had modified a sentence on page 9 of the slip opinion.

On April 23, 1945 the Wage and Hour Administrator petitioned Congress for legislation which will in effect overcome the undesirable results of the decision of the majority of the Court.

In order to insure that the full implications of the change in the opinion and the action by the Administrator be made clear to the members of the majority, we feel that it is our duty to petition for rehearing.

POINT I

Last week the Wage and Hour Administrator in his Annual Report to Congress petitioned for legislative relief from the effect of this Court's decision.

On April 23, 1945 the last Annual Report of the Wage and Hour Administrator was released. By virtue of the powers conferred upon him in Section 4a of the Act, he recommended to Congress *inter alia* the following changes in the Act (at p. 7):

> "No legislative device can supplant the need for adequate, continuing and vigorous enforcement for the protection of those who obey the law, as outlined in the preceding section. An important part of this program is the collection of restitution in cases where the employer has failed to pay his employees in accordance with the Act. Such a step benefits the workers denied wages legally due and denies the employer who has violated the Act the advantage which he would otherwise gain over his competitors. The labor laws of several states give the administrative agency in charge of the enforcement of their minimum wage laws power to sue directly to secure the restitution of unpaid wages to the employees upon assignment of their claims. If such a provision were added to Section 16(b) of the Fair Labor Standards Act, it would increase the efficiency of enforcement and facilitate the collection of restitution. This would benefit the great mass of workers denied wages legally due and, *if a provision for waiving the penalty provided by Section 16(b) except in cases of willful and flagrant violations were*

included, employers who voluntarily pay the restitution due would be saved from possible injustice by relief against the threat of further court action. Technical difficulties involved in relating a suit by the Administrator to the employee's right are not insuperable. I recommend that the Congress undertake a study of this whole problem." (Italics ours.)

If the majority had based their decision upon the language used in the statute or upon the Congressional debates or the Conference Report, this action by the Administrator would be a request for a change in the express wording of the statute.

But this Court did not base its conclusion on any such concept. The opinion states it is based on "legislative policy" (p. 6). Therefore, the Administrator does not require legislative amendment of the Act but only judicial construction in conformity with the practical "legislative policy" as he knows it.

Who should know the legislative policy from a practical standpoint better than the Administrator who is enforcing that policy for the legislature? It is unfortunate that this Court was not informed of the knowledge gained by the Administrator from many years of enforcement experience as reflected in his petition to Congress for relief.

The majority felt that it was bound to treat the willful violator and the good faith violator on the same basis in order to protect all employees from the willful violator. It felt that the "legislative policy" which it found would accomplish the greater good for the greater number. It is clear from analysis of the recommended legislation that in the opinion of the Administrator the greater good for the greater number will be accomplished if waiver of the penalty is permitted except in cases of willful and flagrant violations.

There are three basic reasons why legislative policy supports a waiver of liquidated damages where the employer acts in good faith:

FIRST: During the first five years and nine months of the Act the Office of the Wage and Hour Administrator has obtained restitution of unpaid wages amounting to $70,000,000 for two million employees of ninety thousand employers (Annual Report Release April 23, 1945, p. 10). This does not include settlements which were made without intervention of the Administrator. In making these settlements it was contemplated that they "will in practical effect be final, and that the employees will not sue for liquidated damages" (Solicitor's Brief, p. 18).

If two million potential causes of action are created by the decision of the majority of this Court, "the recoil on the public interest would be out of all proportion to the evil sought to be remedied" *Western Union Telegraph Co. v. Lenroot*, 323 U. S. 490, 508, January 8, 1945.

SECOND: In failing to uphold waiver of liquidated damages where an employer such as petitioner acts in good faith, this Court felt that "while in individual cases hardship may result the restriction will enure to the benefit of the general class of employees in whose interest the law is passed and so that of the community at large" (p. 12). That employees generally will not benefit from the conclusion reached by the majority is borne out by an over-all consideration of the effect of the conclusion of this Court.

This Court's opinion has warned the willful violator and the good faith employer as well, that nothing can be gained by making voluntary restitution of overtime and that payment should be resisted in order that settlement can be effected for less than the 200% upon the basis of a bona fide dispute. If this opinion is to stand, few employers

will ever again voluntarily seek out a former employee to pay him overtime due. If concessions of coverage can be made only under pain of remaining liable for an additional 100% there will be no voluntary restitutions in marginal cases and coverage will be disputed and litigated. The greater good will be served if the greatest possible number of employees are promptly brought within the coverage of the Act rather than that some few employees who have been fairly treated may be permitted to catch at penalties.

THIRD: The decision of the majority has destroyed the Administrator's most effective weapon. For six and one half years he has been making settlements with employers under which he secures concessions of coverage and back pay, but not liquidated damages, for the employees. Such settlements have been the backbone of the administration of the Act. For six and one half years Congress has approved the Administrator's policy of settlement for his Annual Reports are filled with details on "restitutions" secured and "settlements made." The Congressional approval is evidenced by the fact that Congress has not seen fit either to alter this policy or change the statute. Few employers will hereafter concede coverage if it involves confession of judgment for 200% overtime.

POINT II

It was not necessary for this Court to promulgate a rule which punishes both the willful violator and the employer acting in good faith.

As the opinion now stands the Congressional purpose in creating liquidated damages as a sanction is completely nullified. No deterrent effect can be derived from a sanction which affects the guilty and the innocent alike.

The sanction of the statute can only have the intended effect if a rule is established which distinguishes between the willful violator and the good faith employer. Such a distinction is supported by the following:

1. In recommending to Congress that a provision permitting the waiver of liquidated damages (except in a case of willful and flagrant violation) be included in the statute, the Administrator has distinguished between the good and bad faith employer. By this action he indicates that there will be no practical difficulty in distinguishing between the two.

2. This Court has indicated in its opinion that it felt that waivers must be rejected in both cases in order to protect the employees of the willful violator. But the Administrator's experience indicates that if both are to be treated alike, the basic benefits of the Act will be denied to many members of the general class. It thus appears that the only rule which will achieve the end which the Court seeks to accomplish without prejudicing the interests of the members of the general class is a rule which distinguishes between the two.

3. The Court indicates in its opinion that a distinction may be made between good faith and bad faith disputes. If a bona fide dispute may be upheld, this Court should likewise uphold a bona fide waiver.

4. That such a distinction conforms to the intent of Congress is indicated by Section 16(a), which imposes criminal penalties only for willful violations and imprisonment only upon a second conviction.[1]

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(1) In the instant case the penalty which would be imposed upon the petitioner for non-willful violation of the statute is more than twice the maximum fine imposed upon a willful violator of the statute under Section 16(a).

The conclusion we urge is therefore the only result which is consonant alike with the legislative policy and the intent of Congress.[2]

In order that the benefits to the general class of employees which flow from voluntary concessions of coverage may be restored immediately rather than be denied until relief from this Court's determination can be had from Congress (which could have no retroactive effect), the Court is asked to find that the "legislative policy" requires that waivers of liquidated damages be sustained where restitution of unpaid wages is made voluntarily and where the violation has been neither willful nor flagrant.

POINT III

The change in the opinion indicates that the conclusion of the majority was based upon a misconception.

As originally published the opinion read, at page 9:

> "No power was vested in the Administrator to *bring direct suit* to obtain payment of minimum wages left unpaid and to recover damages arising from the delay in payment."

As changed at the behest of the Solicitor General the opinion now reads:

> "No power was vested in the Administrator to *bring an action at law* to obtain payment of minimum wages left unpaid and to recover damages arising from the delay in payment."

We have italicized the words which were changed.

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(2) The Chairman of the Senate Conferees in a memorandum in answer to questions presented to him stated:

> "In my opinion, unless this law is carefully and prudently administered, it will tend to increase monopolies and eliminate smaller industries. To be successful, the law, with its commendable humanitarian objects, must be administered with the caution, care and sympathy of a physician and not with the autocracy and force of a police officer" (83 Cong. Rec. 9176-77, 1938).

A careful analysis of the change can leave no doubt that it vitiates not only the sentence and paragraph in which the change was made but also a fundamental premise upon which the entire opinion is based. All members of the Court now know, appreciate and recognize the fact that Congress did give the Administrator power to bring suit to obtain payment of unpaid wages *but not liquidated damages.*

The power of the Administrator to obtain restitution of unpaid minimum wages or overtime compensation as a part of an injunctive proceeding brought to obtain concessions of coverage as to the future, has long been recognized by the Courts and frequently availed of by the Administrator. Not wishing to have this power questioned the Solicitor has requested that the opinion be modified so as to conform to the true facts.

All members of this Court now know that Congress endowed the Administrator with power to collect unpaid wages *but not liquidated damages* because the overtime is affected with a public interest but the liquidated damages are not. Furthermore, in criminal proceedings the Administrator has the power to obtain restitution of unpaid minimum wages or unpaid overtime compensation *but not liquidated damages* (see Annual Report of the Wage and Hour Administrator, 1939, pp. 67 and 68; 1941 Annual Report, p. 45).

The statement in the decision that "The Administrator was given limited enforcement powers" (p. 9), may not properly be applied to recovery of unpaid minimum wages or unpaid overtime compensation. Congress gave him the broadest of powers because it felt they were affected with a public interest. In so far as liquidated damages are concerned, the Administrator's powers are non-existent because Congress felt that such damages were not affected with a public interest.

And when the opinion states: "The Administrator's civil remedy lay by way of suit for an injunction which by

its nature tends to be prospective in operation" (p. 9), the opinion does not state the fact.

The sentence following the changed sentence reads: "Sole right to bring such suit was vested in the employee under Section 16(b)." That, of course, is not so. The Administrator in his action "in equity" or in a criminal proceeding may secure for the employee restitution of unpaid wages.

Is it credible that if Congress had deemed the liquidated damages to be similarly affected with a public interest, it would have given the Administrator the power, at the public expense, to bring suit or criminal proceedings to obtain restitution of back wages alone and compelled the employee to relitigate the same issues in order to obtain payment of liquidated damages?

It is indeed significant that neither the Wage and Hour Administrator, the Solicitor General of the United States, nor the Assistant Attorney General in charge of the Claims Division of the Department of Justice ever found liquidated damages to be affected with a public interest (Solicitor's Brief, pp. 18 and 19).

The function of the Administrator under the Fair Labor Standards Act is no different than the function of the Administrator under any other Act of Congress, namely: to compel compliance with all provisions of the Act which are affected with a public interest.

The effect of this change is likewise felt in the latter part of the opinion. For when the majority opinion states (p. 10): "One section, Section 16(b) creates the obligation for the entire remedy. Collection of both wages and damages is left to the employee," it is, of course, begging the question since collection of wages is left to the employee *or* the Administrator while collection of damages is left to the employee alone. Earlier in the same paragraph, the Court indicates that Section 16(b) is mandatory in form. The

fact is that there is not a single word in the entire statute that directs the employer to pay liquidated damages. Failure to pay liquidated damages is not even declared to be a prohibited act or unlawful act by Section 15.

Section 16(b) does not provide "that the employer shall be liable for liquidated damages in an amount equal to the minimum wages overdue (p. 10);". The word used in the statute is "unpaid."

When the misapprehension as to the powers of the Administrator in civil and criminal proceedings is removed it is apparent that the nature and purpose of liquidated damages are basically altered, for they no longer remain the sole sanction to compel payment of unpaid wages.

The majority opinion at (p. 11) indicates that there is no reason for making an employer subject to criminal penalties or injunction for failure to pay liquidated damages because they are collectible by the employee. Does the majority wish to infer that whether a right is affected with public interest or not can in any way depend upon who asserts the right? Unpaid wages may likewise be collected by the employees, yet Congress has indicated that it felt that the wage provision should be enforced by the Administrator as well through both civil and criminal proceedings.

Can it be reasonably contended that if Congress had deemed liquidated damages to be affected with a public interest, the recovery of such sum would have been left to the discretion of the individual employee who may never sue either

(a) because he is unaware of his rights; or

(b) because he believes the employer acted in good faith; or

(c) because he is unable to assert his right by reason of his unequal bargaining power or position?

The cases cited in the majority opinion (Footnotes 14 and 30) as authority for the proposition that absence of non-waiver provisions in other statutes has not prevented the Courts from invalidating waivers, all involved waiver of rights unquestionably affected with a public interest and declared so to be in the statutes there considered. In those cases it was not necessary for the Court to clothe the rights with a public interest by judicial implication. In no case did they involve waiver of mere private damages.

> "* * * it is beyond the judicial power of innovation to supply a direct prohibition by construction." *Western Union Telegraph Co.* v. *Lenroot*, 323 U. S. 490, 508.

POINT IV

In determining legislative policy the Court has limited its consideration to an exceptional situation not found in the record.

This is not a case of withholding minimum wages.

O'Neil was promptly paid wages at a rate in excess of the minimum prescribed in the statute as required by the collective bargaining agreements.

The respondent did not suffer any evil effects from delay in the payment of wages because he never deemed himself entitled to any statutory overtime any more than did the employer, Local 32B of the Building Employees Union, which represented him, or the four Appellate Courts which passed upon the matter prior to the *Kirschbaum* decision.

Here there was no "lump sum" (p. 8) payment, nor is there any "difficult problem of allocation" (p. 8). The petitioner did not "gamble on evading the Act" (p. 9) and it did not "secure a release from a worker who needs his

wages promptly (p. 9) * * *," because he is relying on their payment each week. "Reparations to restore damages done" (p. 8) and "compensation for the retention of a working man's pay" (pp. 7-8) are hardly appropriate under the facts of this case where the record indicates that the employer acted in the best of faith.

Furthermore, the overtime provisions of the Act are equally applicable to an employee whose basic rate may be many times the statutory minimum.

The majority opinion indicates that their conclusion is required in order to prevent the bad faith violator from taking advantage of his employee's unequal bargaining position, but the statute provides ample sanctions to deal with a willful violator. Such an employer would in no way avoid the obligation of paying overtime compensation and would subject himself to criminal liability and the possibility of damages of 100% and counsel fees for any period unaccounted for. The sole advantage that could be obtained by this foolhardy practice would be a delay which could only be for a short time.

Furthermore, in the experience of the Administrator the willful violator is practically non-existent. The 1941 Annual Report of the Administrator indicates (p. 45) that out of 10,575 cases during the first three years of the Act only 41 required criminal action. Civil action to obtain restitution was necessary in only 912 cases.

To summarize our position, liquidated damages, as such, are not affected with a public interest. When a willful violator of the statute secures a waiver of liquidated damages from his employee—that waiver violates the legislative policy of the statute. But when an employer acting in good faith makes voluntary restitution and secures a waiver from his employee—that waiver does not violate the legislative policy of the statute.

CONCLUSION

Since the majority of the Court have (a) benefited a small number of employees at the expense of the vast majority; (b) nullified the most effective weapon of the Wage and Hour Administrator; and (c) imposed an unwarranted burden upon an employer acting in good faith, it is respectfully submitted that the petition for rehearing should be granted.

Respectfully submitted,

SEDGWICK SNEDEKER,
JOSEPH V. LANE, JR.,
Counsel for Petitioner.

Of Counsel:
SNEDEKER & SNEDEKER,
CUMMINGS & STANLEY.

Certificate of Counsel

We, SEDGWICK SNEDEKER and JOSEPH V. LANE, JR., hereby certify that the within petition is presented in good faith and not for delay.

Dated, New York, May 3, 1945.

SEDGWICK SNEDEKER,
JOSEPH V. LANE, JR.,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

Nos. 445, 554 and 421.—October Term, 1944.

445	Brooklyn Savings Bank, Petitioner, *vs.* William J. O'Neil.	On Writ of Certiorari to the Court of Appeals of the State of New York.
554	L. Elwood Dize, Trading as Dize Box Company, Petitioner, *vs.* Lake Maddrix.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.
421	Arsenal Building Corporation and Spear & Co., Inc., Petitioners, *vs.* Meyer Greenberg, Suing in Behalf of Himself and Other Employees and Former Employees of Defendants Similarly Situated.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 9, 1945.]

Mr. Justice Reed delivered the opinion of the Court.

The writs of certiorari granted in these three cases present questions as to the interpretation of Section 16(b) of the Fair Labor Standards Act of 1938, 52 Stat. 1060, at 1069, which provides that an employer who violates the minimum wage and maximum hour provisions of the Act ". . . shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages . . . ."[1] Cases No. 445 and No. 554, raise the question whether

[1] Section 16(b) provides:
"Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

an employee subject to the terms of the Act can waive or release his right to receive from his employer liquidated damages under Section 16(b). Case No. 421 presents the issue of whether in a suit brought pursuant to the provisions of Section 16(b) the employee is entitled to interest on sums recovered as wages and liquidated damages under that section. Since these three cases involve similar problems relating to the interpretation of Section 16(b) and the Congressional policy behind its adoption, all three cases will be dealt with in one opinion. See also No. 462 decided today.

No. 445.

The petitioner, Brooklyn Savings Bank, owned and operated an eleven story office building in which the respondent was employed as a night watchman during a two year period from November 5, 1938, to August 30, 1940. Since a substantial portion of that building was devoted to the production of goods for commerce,[2] the respondent was entitled to overtime compensation under the provisions of Section 7 of the Fair Labor Standards Act.[3] 52 Stat. 1063. No such compensation was paid at that time. However, in November, 1942, over two years after the respondent had left petitioner's service, the petitioner computed the statutory overtime compensation due the respondent and offered him a check for $423.16 in return for a release of all of his rights under the Act. The respondent signed the release and took the check. Since this sum did not include any payment for liquidated damages provided for in Section 16(b) of the Act, the respondent subsequently instituted the present proceeding in a New York

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[2] The New York Appellate Term held that the Fair Labor Standards Act applied to the petitioner's operation of its building. This holding was affirmed by the Appellate Division and the Court of Appeals. See notes 5 and 6. Petitioner did not raise this issue in his petition for certiorari.

[3] Section 7(a) provides:

"No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

City Municipal Court to recover liquidated damages due him under Section 16(b). The complaint was dismissed on the grounds that respondent failed to prove a cause of action and also that the respondent "released any claim for liquidated damages or counsel fees." The Appellate Term reversed, per curiam, holding that respondent was employed in the production of goods for commerce within the meaning of the Fair Labor Standards Act and was entitled therefore to recover liquidated damages by reason of petitioner's default in making overtime payments as required by Section 7 of the Act.[4] This decision was affirmed by the New York Appellate Division,[5] and by the New York Court of Appeals.[6] Since the New York Court of Appeals decided a federal question of substance not heretofore determined by this Court, we granted certiorari[7] limited to the question of whether the respondent's release of all further claims and damages under the Act, given at the time he received payment of the overtime compensation due under the Act, is a defense to an action subsequently brought solely to recover liquidated damages. The jurisdiction of this Court rests on Section 237(b) of the Judicial Code.

No. 554.

The petitioner in this second case operated a box factory in which he employed the respondent during the period from October, 1938, the effective date of the Fair Labor Standards Act, to November, 1942, when respondent was discharged. During this period the respondent worked hours in excess of the statutory maximums in effect during this period. Petitioner failed to pay respondent time and one-half for overtime as required by the Act. In September, 1942, the Wage and Hour Administration procured an injunction, by consent, prohibiting the petitioner from violating the Act. In November, 1942, the petitioner tendered the respondent $500 for wages due and owing under the Act, the latter accepting the money and signing a general release of all claims against petitioner under the Act. Both parties knew at this time that more than $500 was due to respondent for minimum wages and overtime pay under the Act. Shortly thereafter, the respondent engaged counsel to recover the balance due

4 O'Neil *v.* Brooklyn Savings Bank, 180 Misc. 542.

5 O'Neil *v.* Brooklyn Savings Bank, 267 App. Div. 317.

6 Affirmed without opinion.

7 323 U. S. —.

him under the Act. Petitioner, before suit was filed, tendered the balance of the statutory wages due, but respondent refused to accept it because it did not include an equal sum for liquidated damages. Thereupon the respondent brought suit for $276.05, the balance of the statutory wages due respondent, and $776.05, being liquidated damages equal to the whole amount ($500 plus $276.05) which had originally been unlawfully withheld. In his answer, the petitioner pleaded settlement of respondent's claim for $500, the release given by respondent pursuant to such settlement, and the petitioner's subsequent tender of a check for the deficiency in statutory minimum and overtime wages due. The District Court granted judgment for the respondent relying on *Guess* v. *Montague*, 140 F. 2d 500, which held invalid a settlement agreement on the part of employees to accept less than the statutory minimum wage.[8] The Circuit Court of Appeals for the Fourth Circuit affirmed.[9]

Because the decision of the Circuit Court of Appeals decided an important question of federal law which has not been, but should be, settled by this Court, we granted certiorari[10] limited to the question of whether there had been a compromise of respondent's claim. Jurisdiction of this Court rests on Section 240(a) of the Judicial Code.

The petition in No. 445 raises the question of whether an employee, accepting from his employer a delayed payment of the basic statutory wages due under the Act, can validly release and waive any further right to recover liquidated damages under the provisions of Section 16(b).[11] A preliminary question arises as to whether respondent's release was given in settlement of a bona fide dispute between the parties with respect to coverage or amount due under the Act or whether it constituted a mere waiver of his right to liquidated damages. The state courts made no findings of fact on this issue. Where a state court fails to pass on evidence or make findings of fact because under their respective views the facts referred to are immaterial, we are not relieved

[8] Maddrix v. Dize, 7 Wage Hour Rep. 313 (Jan. 31, 1944, not officially reported).

[9] Dize v. Maddrix, 144 F. 2d 584.

[10] 323 U. S. —.

[11] See note 4 *supra*.

from the duty of examining the evidence for the purpose of determining what facts reasonably might be and presumably would be found therefrom by the state court. *Merchants' Natl. Bank* v. *Richmond*, 256 U. S. 635, 638; *Carlson* v. *Curtiss*, 234 U. S. 103, 105. Cf. *United Gas Co.* v. *Texas*, 303 U. S. 123, 143; *Creswill* v. *Knights of Pythias*, 225 U. S. 246, 261. We think the record in this case shows that the release was not given in settlement of a bona fide dispute between employer and employee. Petitioner undertook to pay the respondent after our decision in *Kirschbaum Co.* v. *Walling*, 316 U. S. 517, which determined the applicability of the Fair Labor Standards Act to building operators like the petitioner. Petitioner's answer in the Municipal Court merely relied upon payment of the statutory liability and the release of other claims. With the exception of the recital in the release, there is nothing in the record which shows that the respondent's release was obtained as the result of the settlement of a bona fide dispute between the parties with respect to coverage or amount.[12] Moreover, the decision by the New York Appellate Division was based on *Rigopoulos* v. *Kervan*, 140 F. 2d 506, which involved waiver of right to liquidated damages in the absence of a bona fide dispute and which expressly reserved decision on the question of validity of a settlement where there was such a dispute between the parties. The issue presented in No. 445 therefore is whether in the absence of a bona fide dispute between the parties as to liability, respondent's written waiver of his right to liquidated damages under Section 16(b) bars a subsequent action to recover liquidated damages. We are of the opinion that it does not bar such claim.[13]

It has been held in this and other courts that a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release

[12] The respondent, employee, was informed by a third person some two years after he left the petitioner's employment that petitioner had some money for him. Respondent went to petitioner's offices. According to respondent's testimony, there was no discussion or dispute prior to his acceptance of the check given him by the petitioner either as to the existence of liability under the Act or as to the amount of such liability. Viewed most favorably petitioner's witness' testimony was merely to the effect that the petitioner had subjective doubts as to the existence and amount of its liability.

[13] For a general discussion of the problem raised by this case, see Herman, The Administration and Enforcement of the Fair Labor Standards Act, 6 Law and Contemp. Probs. 368; Tepper, Consent Judgments and Contempt Cases under the Fair Labor Standards Act of 1938, 22 Boston Univ. L. Rev. 390; Determination of Wages under Fair Labor Standards Act, 43 Col. L. Rev. 355; 57 Harv. L. Rev. 257.

contravenes the statutory policy. *Midstate Horticultural Co., Inc.* v. *Pennsylvania Railroad Co.*, 320 U. S. 356, 361; *Phillips* v. *Grand Trunk Ry.*, 236 U. S. 662, 667. Cf. *Young* v. *Higbee Company*, 323 U. S. —, —. Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate.[14] With respect to private rights created by a federal statute, such as Section 16(b), the question of whether the statutory right may be waived depends upon the intention of Congress as manifested in the particular statute. As was stated in *Midstate Horticultural Co.* v. *Pennsylvania Railroad Co.*, 320 U. S. 356, 360, ". . . whether the policy of . . . [the] legislation contemplates the one result or the other . . . is the controlling question."

Neither the statutory language, the legislative reports[15] nor the debates[16] indicates that the question at issue was specifically considered and resolved by Congress. In the absence of evidence of specific Congressional intent, it becomes necessary to resort to a broader consideration of the legislative policy behind this provision as evidenced by its legislative history and the provisions in and structure of the Act. See *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, 597; *United States* v. *Darby*, 312 U. S. 100, 117-18, 122-23. Such consideration clearly shows that Congress did not

[14] See United States *v.* Morley Const. Co., 98 F. 2d 781, 788; N. L. R. B. *v.* American P. & C. Corp., 113 F. 2d 232, 118 F. 2d 630; N. L. R. B. *v.* Stackpole Carbon Co., 128 F. 2d 188, 190; Waterman S. S. Corp. *v.* N. L. R. B., 119 F. 2d 760; Perry *v.* W. L. Huffman Automobile Co., 104 Neb. 211, reversed on rehearing, 104 Neb. 214; Harrington *v.* Dept. of Labor & Industry, 252 Mich. 87.

[15] The provisions of Section 16(b) appeared for the first time in the bill reported by a Conference Committee of both Houses. The Committee report simply stated, H. Rep. No. 2738, 75th Cong., 3d Sess., p. 33:

"Section 16 of the conference agreement provides a fine of not more than $10,000, or imprisonment for not more than 6 months, or both, for violations of the act. No person is to be imprisoned upon conviction for a first offense. This section also provides for civil reparations for violations of the wages and hours provisions. If an employee is employed for less than the legal minimum wage, or if he is employed in excess of the specified hours without receiving the prescribed payment for overtime, he may recover from his employer twice the amount by which the compensation he should have received exceeds that which he actually received."

There were three legislative reports on predecessor bills but these bills did not contain any provision analogous to Section 16(b). S. Rep. No. 884, 75th Cong., 1st Sess.; H. Rep. No. 1452, 75th Cong., 1st Sess.; H. Rep. No. 2182, 75th Cong., 3d Sess.

[16] As indicated in note 15, *supra*, Section 16(b) was first incorporated into the Fair Labor Standards Act of 1938 in the bill reported out of the Conference Committee of both Houses. The debates in both Houses prior to adop-

intend that an employee should be allowed to waive his right to liquidated damages.

The legislative history of the Fair Labor Standards Act shows an intent on the part of Congress to protect certain groups of the population from sub-standard wages and excessive hours which endangered the national health and well-being and the free flow of goods in interstate commerce.[17] The statute was a recognition of the fact that due to the unequal bargaining power as between employer and employee, certain segments of the population required federal compulsory legislation to prevent private contracts on their part which endangered national health and efficiency and as a result the free movement of goods in interstate commerce.[18] To accomplish this purpose standards of minimum wages and maximum hours were provided. Neither petitioner nor respondent suggests that the right to the basic statutory minimum wage could be waived by any employee subject to the Act. No one can doubt but that to allow waiver of statutory wages by agreement would nullify the purposes of the Act. We are of the opinion that the same policy considerations which forbid waiver of basic minimum and overtime wages under the Act also prohibit waiver of the employee's right to liquidated damages.

We have previously held that the liquidated damage provision is not penal in its nature but constitutes compensation for the

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tion of the Conference report were quite brief. 83 Cong. Rec. 9158-78, 9246-67. The only reference to Section 16(b) was by Representative Keller who stated, 83 Cong. Rec. p. 9264:

"Among the provisions for the enforcement of the act an old principle has been adopted and will be applied to new uses. If there shall occur violations of either the wages or hours, the employees can themselves, or by designated agent or representatives, maintain an action in any court to recover the wages due them and in such a case the court shall allow liquidated damages in addition to the wages due equal to such deficient payment and shall also allow a reasonable attorney's fees and assess the court costs against the violator of the law so that employees will not suffer the burden of an expensive lawsuit. The provision has the further virtue of minimizing the cost of enforcement by the Government. It is both a common-sense and economical method of regulation. The bill has other penalties for violations and other judicial remedies, but the provision which I have mentioned puts directly into the hands of the employees who are affected by violation the means and ability to assert and enforce their own rights, thus avoiding the assumption by Government of the sole responsibility to enforce the act."

[17] H. Rep. No. 2738, 75th Cong., 3d Sess., pp. 1, 13, 21 and 28.

[18] The legislative debates indicate that the prime purpose of the legislation was to aid the unprotected, unorganized and lowest paid of the nation's working population; that is, those employees who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage. 81 Cong. Rec. 7652, 7672, 7885; 82 Cong. Rec. 1386, 1395, 1491, 1505, 1507;; 83 Cong. Rec. 7283, 7298, 9260, 9265. See also H. Rep. No. 1452, 75th Cong., 1st Sess., p. 9; S. Rep. No. 884, 75th Cong., 1st Sess., pp. 3-4.

retention of a workman's pay which might result in damages too obscure and difficult of proof for estimate other than by liquidated damages. *Overnight Motor Co.* v. *Missel*, 316 U. S. 572. It constitutes a Congressional recognition that failure to pay the statutory minimum on time may be so detrimental to maintenance of the minimum standard of living "necessary for health, efficiency and general well-being of workers"[19] and to the free flow of commerce, that double payment must be made in the event of delay in order to insure restoration of the worker to that minimum standard of well-being.[20] Employees receiving less than the statutory minimum are not likely to have sufficient resources to maintain their well-being and efficiency until such sums are paid at a future date. The same policy which forbids waiver of the statutory minimum as necessary to the free flow of commerce requires that reparations to restore damage done by such failure to pay on time must be made to accomplish Congressional purposes. Moreover, the same policy which forbids employee waiver of the minimum statutory rate because of inequality of bargaining power, prohibits these same employees from bargaining with their employer in determining whether so little damage was suffered that waiver of liquidated damage is called for. This conclusion is in accord with decisions of the majority of the federal courts that have considered this question.[21] This result, moreover, avoids the difficult problems of allocation that would arise in numerous cases where a lump sum was paid for back wages and waiver of right to liquidated damages and where issue

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[19] Section 2(a), 52 Stat. 1060.

[20] The necessity of prompt payment to workers of wages has long been recognized by Congress as well as by state legislatures. Numerous statutory provisions have been adopted to insure prompt payment. See for example, 33 U. S. C. (§ 596; 46 U. S. C. (§ 914(e) and (f); Wis. Rev. Stat. 1941, § 103.39; N. Y. Labor Law, [illegible], § 196; Calif. Labor Code, 1937, §§ 205, 219.

As to the importance to the worker of receiving prompt payment, see Labor Laws and their Administration, 1936 Bull. No. 629, U. S. Dept. of Labor, Bureau Labor Statistics, p. 139.

[21] Post, et al. *v.* Fleming, et al., 7 Wage Hour Rep. 1206 (Dec. 14, 1944); Seneca Coal & Coke Co. *v.* Lofton, 136 F. 2d 359; Rigopoulos *v.* Kervan, 140 F. 2d 506; Birbalas *v.* Cuneo Printing Industries, 140 F. 2d 826; Travis *v.* Ray, 41 F. Supp. 6; Hutchinson *v.* William C. Barry, Inc., 44 F. Supp. 829. *Contra*: Guess *v.* Montague, 140 F. 2d 500.

There has been less unanimity over the right to compromise claims under the statute in cases involving a bona fide dispute. See Atlantic Company *v.* Broughton, 7 Wage Hour Rep. 1168 (Dec. 4, 1944); Post et al. *v.* Fleming, et al., *supra;* Fleming *v.* Warshawsky & Co., 123 F. 2d 622; Donahue *v.* Susquehanna Collieries Co., 138 F. 2d 3; Rigopoulos *v.* Kervan, *supra;* David *v.* Atlantic Co., 69 Ga. 643. For discussion of the release and

was subsequently raised as to whether there had been full payment of the basic minimum and overtime wages specified in the Act. Nor does the instant case involve exceptional circumstances of the kind held to justify a waiver agreement such as was upheld in *Fort Smith & Western R. Co.* v. *Mills*, 253 U. S. 206.

The private-public character of this right is further borne out by an examination of the enforcement provisions of the Act. Although the difficulties of enforcement under the Act were recognized,[22] the Administrator was given limited enforcement powers. Criminal prosecution was available only for willful violations—difficult to prove. Section 16(a). The Administrator's civil remedy lay by way of suit for an injunction, which by its nature tends to be prospective in operation. No power was vested in the Administrator to bring ~~direct suit~~ to obtain payment of minimum wages left unpaid and to recover damages arising from delay in payment. Sole right to bring such suit was vested in the employee under Section 16(b). Although this right to sue is compensatory, it is nevertheless an enforcement provision.[23] And not the least effective aspect of this remedy is the possibility that an employer who gambles on evading the Act will be liable for payment not only of the basic minimum originally due but also damages equal to the sum left unpaid. To permit an employer to secure a release from the worker who needs his wages promptly will tend to nullify the deterrent effect which Congress plainly intended that Section 16(b) should have. Knowledge on the part of the employer that he cannot escape liability for liquidated damages by taking advantage of the needs of his employees tends to insure compliance in the first place. To allow contracts for waiver of liquidated damages approximates situations where courts have uniformly held that contracts tending to encourage violation of laws are void as contrary to public policy.[24]

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settlement problem as it has arisen under the state Workmen's Compensation Acts, See Dodd, Administration of Workmen's Compensation, 186 *et seq.*

For lower federal court decisions holding that right to unpaid minimum wages and overtime compensation constitute a single right, see Post, et al. *v.* Fleming, et al., *supra*; Birbalas *v.* Cuneo, *supra*. Cf. Buckley *v.* Oceanic S. S. Co., 5 F. 2d 545.

22 See statement by Secretary of Labor, Joint Hearings, Committee on Education and Labor, United States Senate, and Committee on Labor of House of Representatives, 75th Cong., 1st Sess., on S. 2475 and H. R. 7200, Part 1, p. 181. See also note 16, *supra*.

23 Joint Hearings, *op. cit.*, *supra*, note 22, Part 2, p. 457. See also note 16, *supra*.

24 See Sage *v.* Hampe, 235 U. S. 99, 105; Smith *v.* McCullough, 270 U. S. 456, 465; Muschany *v.* United States, 323 U. S. —, —.

Prohibition of waiver of claims for liquidated damages accords with the Congressional policy of uniformity in the application of the provisions of the Act to all employers subject thereto, unless expressly exempted by the provisions of the Act. An employer is not to be allowed to gain a competitive advantage by reason of the fact that his employees are more willing to waive claims for liquidated damages than are those of his competitor.[25] The same considerations calling for equality of treatment which we found so compelling in *Midstate Horticultural Co., Inc., supra,* exist here.

The provisions of the statute reflect the policy considerations discussed above which prohibit waiver of the right to liquidated damages. Sections 7(a) and 16(b) are mandatory in form. In terms they direct that the employer shall not employ a worker longer than the specified time without payment of overtime compensation and that upon violation of this provision, the employer shall be liable for statutory wages and liquidated damages. One section, Section 16(b), creates the obligation for the entire remedy. Collection of both wages and damages is left to the employee.[26]

Respondent argues that Section 16(b) indicates that the right to liquidated damages arises only if the employee is compelled to sue for minimum wages due. Section 16(b) in no way bears out this interpretation.[27] It provides absolutely that the employer shall be liable for liquidated damages in an amount equal to minimum wages overdue; liability is not conditioned on default at the time suit is begun. It is also argued that the elimination from a predecessor bill of a provision prohibiting waiver of the provisions of the Act indicates a Congressional intent to allow an employee to waive his claim to liquidated damages.[28] But

[25] H. Rep. No. 2182, 75th Cong., 3d Sess., pp. 6-7, states: "There are to be no differentials either between sections of the United States, between industries, or between employers. No employer in any part of the United States in any industry affecting interstate commerce need fear that he will be required by law to observe wage and hour standards higher than those applicable to his competitors. No employee in any part of the United States in any industry affecting interstate commerce need fear that the fair labor standards maintained by his employer will be jeopardized by oppressive labor standards maintained by those with whom his employer competes."

[26] Section 16, 52 Stat. 1069.

[27] See note 1, *supra.*

[28] Section 20(a) and (b) of the original bills introduced into the House and Senate provided as follows:

"SEC. 20. (a) Any contract, agreement, or understanding for the employment of any person in violation of any provision of this Act or of a regulation or order thereunder shall be null and void.

"(b) Any contract, agreement, understanding, condition, stipulation, or provision binding any person to waive compliance with any provision of this Act or with any regulation or order thereunder shall be null and void."

such a contention proves too much. It applies with equal force to the right to minimum wages. Such an interpretation would nullify the effectiveness of the Act. It is also suggested that the failure to impose criminal sanctions for the violation of the liquidated damage provisions or to authorize an injunction to prevent their violation manifests a difference in Congress' attitude toward the waiver of the employee's right to the basic statutory wage as compared with his right to liquidated damages. But there is no reason for making an employer subject to a criminal penalty or an injunction for failure to pay liquidated damages. They are collectible as private damages by the employee for failure to obey the same requirements as to wages which are punished and controlled, so far as the purely public interest is concerned, by criminal sanctions and injunction.

Petitioner relies on the fact that various other federal statutes authorizing employees to sue for wages or for damages arising from injuries sustained in the course of employment contain specific provisions prohibiting waiver of rights under the acts involved, or provide means by which compromises and settlements can be approved.[29] There is no indication why Congress did not embody a similar provision in the Act under consideration in this case. Absence of such provisions, however, has not prevented the courts from invalidating waivers where the legislative policy would be thwarted by permitting such contracts.[30] The decision in the

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S. 2475, 75th Cong., 1st Sess., introduced May 24, 1937; H. R. 7200, 75th Cong., 1st Sess., introduced May 24, 1937.

Except for renumbering of the section and one slight change in language, this provision remained in the bill and its various amendments, apparently until it was eliminated by the Conference Committee. Section 17, S. 2475, Calendar No. 905, [Report No. 884], 75th Cong., 1st Sess., reported with an amendment, July 6, 1937; Section 17, S. 2475, Union Calendar No. 535 [Report No. 1452], 75th Cong., 1st Sess., reported with amendment, Aug. 6, 1937; Section 16, S. 2475, 75th Cong., 2d Sess., amended and recommitted, Dec. 17, 1937. The reason for eliminating this provision from the final bill does not appear. It was done in the course of the general revision of the bill in the Conference Committee.

[29] The following federal statutes contain express provisions relating to the waiver or settlement of claims under them: Longshoremen's and Harbor Workers' Comp. Act, 33 U. S. C. §§ 908(i), 915(b), 916; Federal Employers' Liability Act, 45 U. S. C. § 55; Jones Act, 46 U. S. C. § 688; settlement of wage claims of merchant seamen, 46 U. S. C. §§ 597, 644. The federal courts have interpreted these provisions strictly so as to protect the employee. Garrett *v.* Moore-McCormack Co., 317 U. S. 239; Duncan *v.* Thompson, 315 U. S. 1; Pacific Mail S. S. Co. *v.* Lucas, 258 U. S. 266; Arrow Stevedore Co. *v.* Pillsbury, 88 F. 2d 446; Pacific Employers Ins. Co. *v.* Pillsbury, 130 F. 2d 21; Henderson *v.* Glen Falls Indemnity Co., 134 F. 2d 320; Westenrider *v.* United States, 134 F. 2d 772.

[30] See note 14, *supra.*

instant case is based on the legislative policy behind this enactment and issues arising under other acts having different legislative backgrounds are not conclusive in determining the legislative intent with respect to the Fair Labor Standards Act. Failure to provide a method of waiving claims under the Act can support contrary inferences, that such waivers were to be allowed or that the provisions of the Act state a settled policy which cannot be modified by private contracts. We are of the opinion that the legislative history and provisions of the Act support a view prohibiting such waiver. As was stated in *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 397, "'while in individual cases hardship may result, the restriction will enure to the benefit of the general class of employees in whose interest the law is passed and so to that of the community at large.' [*Adkins* v. *Children's Hospital*, 261 U. S. 525.] Id., p. 563."

The invalidity of the release or waiver in No. 445 makes the release and waiver involved in No. 554 a fortiori invalid. In the latter case both the federal District Court[31] and the Circuit Court of Appeals[32] found "that both parties knew more than $500.00 was due . . . ." at the time the petitioner tendered $500 to the respondent in return for a comprehensive release covering all of the respondent's claims against the petitioner employer. Thus in that case the employer and employee attempted by means of that release to waive the right to the basic statutory minimum as well as the right to liquidated damages. This attempted release and waiver of rights under the Act was absolutely void. See *Smith* v. *McCullough*, 270 U. S. 456, 465. When petitioner attempted to pay the additional sum due as a statutory minimum, the respondent refused to accept payment, thus there was no valid settlement which would operate to bar the respondent employee's right to recover the balance of the statutory minimum wage still due and liquidated damages equal in amount to the entire sum of wages which the employer had not paid promptly.

Our decision of the issues raised in No. 445 and No. 554 has not necessitated a determination of what limitation, if any, Section 16(b) of the Act places on the validity of agreements between an employer and employee to settle claims arising under the Act if the settlement is made as the result of a bona fide dispute between the two parties, in consideration of a bona fide compromise and settlement. Neither of the above mentioned cases presented

[31] 7 Wage Hour Rep. 313.
[32] 144 F. 2d 584, 585.

such issues for our consideration. Cf. *Duncan* v. *Thompson*, 315 U. S. 1, 7; *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239; *Tennessee Coal. Co.* v. *Muscoda Local*, 321 U. S. 590, 603.

There remains to be considered the question whether an employee recovering minimum wages and liquidated damages under the provisions of Section 16(b) is also entitled to interest on the sums so recovered.[33] We granted certiorari in No. 421[34] to the Circuit Court of Appeals for the Second Circuit, limited to the question of the propriety of allowing interest on recoveries of unpaid overtime compensation and liquidated damages under the Act. Certiorari was granted because this court decided an important federal question of substance which had not previously been determined by this Court. The jurisdiction of this Court in No. 421 rests on Section 240(a) of the Judicial Code.

We are of the opinion that the question of the right to interest on sums recoverable under the provisions of Section 16(b) of the Act constitutes a question of federal, not local, law. *Board of Commissioners* v. *United States*, 308 U. S. 343, 349-50; see *Prudence Corp.* v. *Geist*, 316 U. S. 89, 95; *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239. Interest is not recoverable on judgments obtained under Section 16(b). As was indicated in our decision in *Overnight Motor Co.* v. *Missel*, *supra*, Section 16(b) authorizes the recovery of liquidated damages as compensation for delay in payment of sums due under the Act. Since Congress has seen fit to fix the sums recoverable for delay, it is inconsistent with Congressional intent to grant recovery of interest on such sums in view of the fact that interest is customarily allowed as compensation for delay in payment. To allow an employee to recover the basic statutory wage and liquidated damages, with interest, would have the effect of giving an employee double compensation for damages arising from delay in the payment of the basic minimum wages. See *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 296. Allowance of interest on minimum wages and liquidated damages recoverable under Section 16(b) tends to produce the undesirable result of allowing interest on interest.

[33] In No. 445 the New York Appellate Term allowed interest on unpaid liquidated damages. O'Neil v. Brooklyn Savings Bank, 180 Misc. 542. This was affirmed on subsequent appeals to higher state courts. See notes 5 and 6 *supra*. Since petitioner in No. 445 did not seek certiorari on this issue, we have not examined it. Connecticut Ry. Co. v. Palmer, 305 U. S. 493, 495. The federal District Court and Circuit Court of Appeals in No. 554, did not award the employee in that case interest on sums adjudged due as unpaid overtime wages and liquidated damages.

[34] 323 U. S. —.

See *Cherokee Nation* v. *United States*, 270 U. S. 476, 490. Congress by enumerating the sums recoverable in an action under Section 16(b) meant to preclude recovery of interest on minimum wages and liquidated damages.[35]

The judgments in No. 445 and No. 554 are hereby affirmed. The judgment in No. 421 is reversed in so far as it included interest.

[35] See note 1, *supra*.

Mr. Chief Justice STONE, dissenting in No. 445 and concurring in No. 554.

Mr. Justice ROBERTS, Mr. Justice FRANKFURTER and I think the judgment should be reversed in *Brooklyn Savings Bank* v. *O'Neil*, No. 445, and affirmed in *Dize* v. *Maddrix*, No. 554.

No. 445.

Respondent was employed by petitioner in New York, and in New York gave to petitioner, without consideration, a purported written release of its obligation to pay the statutory liquidated damages prescribed by § 16(b) of the Fair Labor Standards Act. Section 243 of the Debtor and Creditor law of New York declares a written instrument purporting to release "all claims, debts, demands or obligations . . . shall not be invalid because of the absence of consideration or of a seal." Counsel are agreed that, unless the words or policy of the Fair Labor Standards Act preclude, the written release was as effective to discharge the obligation for liquidated damages as was the release under seal at common law.

We find nothing in the Fair Labor Standards Act to prevent the effective operation of such a release upon the cause of action for liquidated damages more than any other. Section 16(b) of the Act authorizes the employee to recover liquidated damages from an employer who violates the duty imposed by §§ 6 and 7 of the Act to pay the prescribed minimum and overtime wages. That duty is expressed in §§ 6 and 7 in terms of a command to the employer. Willful failure to obey it is made a criminal offense by §§ 15(a)(2) and 16(a), and authority to enjoin violations of §§ 6 and 7 is given by §§ 15 and 17.

These provisions and these alone afford some basis for inferring a Congressional policy against the release of minimum and over-

time wages. But the Act places the right to recover liquidated damages authorized by § 16(b) on a very different footing. That section expresses no command. It merely imposes a civil liability on the employer and gives an action to the employee to enforce the liability. Failure by the employer to pay the prescribed liquidated damages is not made a criminal offense by §§ 15 and 16 and may not be enjoined under §§ 15 and 17.

The studious avoidance of any provision making the non-payment of the liquidated damages a public wrong, by the omissions of sanctions which the statute does impose for the failure to pay minimum and overtime wages, is the most persuasive kind of evidence that it was the Congressional purpose to leave undisturbed the general policy of the law that a mere private claim for damages may be released at the will of the claimant. It is not an answer to say that "there is no reason for making an employer subject to a criminal penalty or an injunction for failure to pay liquidated damages", since they are "collectible as private damages." It is precisely because the statute in this case has in every respect treated the claim for liquidated damages as a private claim while imposing sanctions, as for a public wrong, for non-payment of minimum and overtime wages, that we must infer that Congress intended that the claim for liquidated damages should have the status of private claims, which are subject to release, a status which the statute denied to minimum and overtime wages.

This pointed difference in the treatment of the two classes of claims is underscored by the complete lack of any legislative history suggesting that there was any Congressional purpose to treat alike the two classes of claims which it treated so differently in the statute. In its progress through Congress there was stricken from the bill, which was finally enacted as the Fair Labor Standards Act, a clause providing that any agreement for waiver of compliance with any provision of the Act should be void. Section 17(b), S. 2475, as passed by Senate, 75th Cong., 1st Sess., 1937. With this provision eliminated, the mandatory terms of §§ 6 and 7, the criminal penalties of the Act, and its provision for relief in equity, afford the sole ground to be found either within or without the statute for any inference of a Congressional policy against the release of claims arising under the Act. These factors concern only the minimum and overtime wages. They neither support nor suggest any Congressional policy against release of liquidated damages to which they are inapplicable and wholly unrelated.

If such an undeclared policy is to be inferred, it must be inferred from the statute, read in its appropriate setting. The statute is silent as to any exceptional policy with respect to claims for unliquidated damages—a silence which is given meaning by the provisions affirmatively making non-payment of minimum and overtime wages a public wrong. Any inference that a release of minimum and overtime wages is invalid must be because the release is an aggravation of the public wrong. But to draw that inference is to foreclose the possibility of a like inference with respect to liquidated damages, the non-payment of which is not made a public wrong.

We held in *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, that the provision for liquidated damages is not punitive. Hence it cannot in itself be said either to have created or sanctioned a public right or interest in the recovery of liquidated damages. In view of the uncertain coverage of the Act we cannot ignore the fact that the statutory liability may be harsh in its application and enable the employee to recover an amount far in excess of any damage which he has in fact suffered. All these considerations persuasively suggest that Congress has adopted no policy which precludes the employee from releasing, as in the case of other claims, the claim for liquidated damages when the release conforms to local law and is procured without overreaching or unfairness. On the contrary the provisions of the Act show, and the legislative history emphasizes, that Congress intended to treat the liquidated damage obligation differently from its command to pay minimum and overtime wages. Because of this difference we cannot say that it intended to place the employee so far in tutelage as not to be free to give, and the employer to obtain, a release of what is by the terms of the statute nothing more than a cause of action for damages which in fact he may or may not have suffered.

No. 554.

There appears to have been no accord and satisfaction in this case, and for the reasons stated in our opinion in *Brooklyn Savings Bank* v. *O'Neil*, No. 445, the attempted release by respondent of his claim for overtime wages was void as against the policy of the Fair Labor Standards Act. Because of petitioner's failure to pay overtime wages as directed by § 7 of the Act, respondent is entitled to recover liquidated damages as provided by § 16(b), and the judgment should be affirmed.